

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

KHUZI HSUE, DDS, PS,

Plaintiff,

No.

V.

**TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,**

COMPLAINT—CLASS ACTION

JURY DEMAND

Defendants.

I. INTRODUCTION

Plaintiff Khuzi Hsue, DDS, PS (“Hsue”), individually and on behalf of all other similarly situated members of the defined national and Washington subclasses (the “Class Members”), by and through the undersigned attorneys, brings this class action against Travelers Casualty Insurance of America (“Defendant” or “Travelers”) and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in

COMPLAINT—CLASS ACTION - 1

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controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1337.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has personal jurisdiction over Defendant, a substantial portion the alleged wrongdoing occurred in this District and the state of Washington, and Defendant has sufficient contacts with this District and the state of Washington.

3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §13391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District. Plaintiff's place of business is located in Tukwila, Washington, King County. This action is therefore appropriately filed in the Seattle Division because a substantial portion of the events giving rise to this lawsuit arose in King County.

III PARTIES

4. Plaintiff Khuzi Hsue, DDS, PS owns and operates a dentistry practice located at 15668 W. Valley Highway in Tukwila, Washington, 98188.

5. Defendant Travelers Casualty Insurance Company of America is an insurance carrier incorporated and domiciled in the State of Connecticut, with its principal place of business in Rocky Hill, Connecticut.

IV NATURE OF THE CASE

6. Due to COVID-19 and a state-ordered mandated closure, Plaintiff cannot provide dentistry services. Plaintiff intended to rely on its business insurance to keep the business alive. This lawsuit is filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance benefits to which they are entitled and for which they paid.

COMPLAINT—CLASS ACTION - 2

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7. Travelers issued one or more insurance policies to Plaintiff, including Businessowners Property Coverage and related endorsements, insuring Plaintiff's property and business practice and other coverages at all relevant times.

8. Plaintiff's business property includes property owned and leased by Plaintiff and used for general business purposes for the specific purpose of dentistry and other business activities.

9. Travelers' Businessowners Property Coverage promises to pay Plaintiff for risks of "DIRECT PHYSICAL LOSS" to covered property and includes coverage for risks of both "loss of or damage to" covered property.

10. Travelers' Businessowners Property Coverage provides Plaintiff with Business Income Coverage, Extra Expense Coverage, Extended Business Income Coverage and Civil Authority Coverage.

11. Plaintiff paid all premiums for the coverage when due.

12. On or about January 2020, the United States of America saw its first cases of persons infected by COVID-19, which has been designated a worldwide pandemic.

13. In light of this pandemic, Washington Governor Jay Inslee issued certain proclamations and orders affecting many persons and businesses in Washington, whether infected with COVID-19 or not, requiring certain public health precautions. Among other things, Governor Inslee’s “Stay Home, Stay Healthy” order required the closure of all non-essential businesses, including Plaintiff’s dental practice.

14. By order of Governor Inslee, dentists including Plaintiff were prohibited from practicing dentistry but for urgent and emergency procedures.

1 15. Plaintiff's property sustained direct physical loss and/or damages related to
2 COVID-19 and/or the proclamations and orders.

3 16. Plaintiff's property will continue to sustain direct physical loss or damage covered
4 by the Traveler's policy or policies, including but not limited to business interruption, extra
5 expense, interruption by civil authority, and other expenses.
6

7 17. Plaintiff's property cannot be used for its intended purposes.

8 18. As a result of the above, Plaintiff has experienced and will experience loss
9 covered by the Travelers policy or policies.

10 19. Upon information and belief, Travelers denied coverage for other similarly
11 situated policyholders.
12

V. CLASS ACTION ALLEGATIONS

13 20. This matter is brought by Plaintiff Khuzi Hsue, DDS, PS, on behalf of itself and
14 those similarly situated, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).
15

16 21. The Classes and Subclasses that Plaintiff seek to represent are defined at this time
17 as:
18

19 A. ***Business Income Coverage Breach of Contract Class:*** All persons and
20 entities in the United States insured under a Travelers policy with Business Income
21 Coverage who suffered a suspension of their business at the covered premises related to
22 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
23 authorities and whose Business Income claim was denied by Travelers.
24

25 B. ***Business Income Coverage Breach of Contract Washington Subclass:***
26 All persons and entities in the State of Washington insured under a Travelers policy with
Business Income Coverage who suffered a suspension of their business at the covered

1 premises related to COVID-19 and/or orders issued by Governor Inslee and/or other civil
2 authorities and whose Business Income claim was denied by Travelers.

3 C. ***Business Income Coverage Declaratory Relief Class:*** All persons and
4 entities in the United States insured under a Travelers policy with Business Income
5 Coverage who suffered a suspension of their business at the covered premises related to
6 COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
7 authorities.

9 D. ***Business Income Coverage Declaratory Relief Washington Subclass:*** All
10 persons and entities in the State of Washington insured under a Travelers policy with
11 Business Income Coverage who suffered a suspension of their business at the covered
12 premises related to COVID-19 and/or orders issued by Governor Inslee and/or other civil
13 authorities.

15 E. ***Extra Expense Breach of Contract Class:*** All persons and entities in the
16 United States insured under a Travelers policy with Extra Expense coverage who
17 incurred expenses while seeking to minimize losses from the suspension of business at
18 the covered premises in connection with COVID-19 and/or orders issued by Governor
19 Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim
20 was denied by Travelers.

22 F. ***Extra Expense Breach of Contract Washington Subclass:*** All persons
23 and entities in the State of Washington insured under a Travelers policy with Extra
24 Expense coverage who incurred expenses while seeking to minimize losses from the
25 suspension of business at the covered premises in connection with COVID-19 and/or

1 orders issued by Governor Inslee and/or other civil authorities and whose Extra Expense
2 claim was denied by Travelers.

3 **G. *Extra Expense Declaratory Relief Class:*** All persons and entities in the
4 United States insured under a Travelers policy with Extra Expense coverage who
5 incurred expenses while seeking to minimize losses from the suspension of their business
6 at the covered premises in connection with COVID-19 and/or orders issued by Governor
7 Inslee, other Governors, and/or other civil authorities.

8 **H. *Extra Expense Declaratory Relief Washington Subclass:*** All persons and
9 entities in the State of Washington insured under a Travelers policy with Extra Expense
10 coverage who incurred expenses while seeking to minimize losses from the suspension of
11 their business at the covered premises in connection with COVID-19 and/or orders issued
12 by Governor Inslee and/or other civil authorities.

13 **I. *Extended Business Income Breach of Contract Class:*** All persons and
14 entities in the United States insured under a Travelers policy with Extended Business
15 Income coverage who suffered a suspension of their business at the covered premises
16 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
17 other civil authorities and whose Extended Business Income claim was denied by
18 Travelers.

19 **J. *Extended Business Income Breach of Contract Washington Subclass:***
20 All persons and entities in the State of Washington insured under a Travelers policy with
21 Extended Business Income coverage who suffered a suspension of their business at the
22 covered premises related to COVID-19 and/or orders issued by Governor Inslee and/or
23

1 other civil authorities and whose Extended Business Income claim was denied by
2 Travelers.

3 K. ***Extended Business Income Declaratory Relief Class:*** All persons and
4 entities in the United States insured under a Travelers policy with Extended Business
5 Income coverage who suffered a suspension of their business at the covered premises due
6 to COVID-19 related to COVID-19 and/or orders issued by Governor Inslee, other
7 Governors, and/or other civil authorities.
8

9 L. ***Extended Business Income Declaratory Relief Washington Subclass:*** All
10 persons and entities in the State of Washington insured under a Travelers policy with
11 Extended Business Income coverage who suffered a suspension of their business at the
12 covered premises due to COVID-19 related to COVID-19 and/or orders issued by
13 Governor Inslee and/or other civil authorities
14

15 M. ***Civil Authority Breach of Contract Class:*** All persons and entities in the
16 United States insured under a Travelers policy with Civil Authority coverage who
17 suffered a loss of business income and/or extra expense related to the impact of COVID-
18 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
authorities and whose Civil Authority claim was denied by Travelers.
20

21 N. ***Civil Authority Breach of Contract Washington Subclass:*** All persons
22 and entities in the State of Washington insured under a Travelers policy with Civil
23 Authority coverage who suffered a loss of business income and/or extra expense related
24 to the impact of COVID-19 and/or orders issued by Governor Inslee and/or other civil
25 authorities and whose Civil Authority claim was denied by Travelers.
26

1 O. *Civil Authority Declaratory Relief Class:* All persons and entities in the
2 United States insured under a Travelers policy with Civil Authority coverage who
3 suffered a loss of business income and/or extra expense related to the impact of COVID-
4 19 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
5 authorities.
6

7 P. *Civil Authority Declaratory Relief Washington Subclass:* All persons and
8 entities in the State of Washington insured under a Travelers policy with Civil Authority
9 coverage who suffered a loss of business income and/or extra expense related to the
10 impact of COVID-19 19 and/or orders issued by Governor Inslee and/or other civil
11 authorities.
12

13 22. Excluded from the Classes and Subclasses are Defendant's officers, directors, and
14 employees; the judicial officers and associated court staff assigned to this case; and the
15 immediate family members of such officers and staff. Plaintiff reserves the right to amend the
16 Class definition based on information obtained in discovery.
17

18 23. This action may properly be maintained on behalf of each proposed Class under
19 the criteria of Rule 23 of the Federal Rules of Civil Procedure.
20

21 24. **Numerosity:** The members of the Class are so numerous that joinder of all
22 members would be impractical. Plaintiff is informed and believes that the proposed Class
23 contains thousands of members. The precise number of class members can be ascertained
24 through discovery, which will include Defendant's records of policyholders.
25

26 25. **Commonality and Predominance:** Common questions of law and fact
predominate over any questions affecting only individual members of the Class. Common
questions include, but are not limited to, the following:
27

- 1 A. Whether the class members suffered covered losses based on common
2 policies issued to members of the Class;
- 3 B. Whether Travelers acted in a manner common to the class and wrongfully
4 denied claims for coverage relating to COVID-19 and/or orders issued by Governor
5 Inslee, other Governors, and/or other civil authorities;
- 6 C. Whether Business Income coverage in Travelers' policies of insurance
7 applies to a suspension of practice relating to COVID-19 and/or orders issued by
8 Governor Inslee, other Governors, and/or other civil authorities;
- 9 D. Whether Extra Expense coverage in Travelers' policies of insurance
10 applies to efforts to minimize a loss relating to COVID-19 and/or orders issued by
11 Governor Inslee, other Governors, and/or other civil authorities;
- 12 E. Whether Extended Business Income coverage in Travelers' policies of
13 insurance applies to a suspension of practice relating to COVID-19 and/or orders issued
14 by Governor Inslee, other Governors, and/or civil authorities;
- 15 F. Whether Civil Authority coverage in Travelers' policies of insurance
16 applies to a suspension of practice relating to COVID-19 and/or orders issued by
17 Governor Inslee, other Governors, and/or civil authorities;
- 18 G. Whether Travelers has breached its contracts of insurance through a
19 blanket denial of all claims based on business interruption, income loss or closures
20 related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or
21 other civil authorities;
- 22 H. Whether, because of Defendant's conduct, Plaintiff and the class members
23 have suffered damages; and if so, the appropriate amount thereof; and

1 I. Whether, because of Defendant's conduct, Plaintiff and the class members
2 are entitled to equitable and declaratory relief, and if so, the nature of such relief.

3 26. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
4 classes. Plaintiff and all the members of the classes have been injured by the same wrongful
5 practices of Defendant. Plaintiff's claims arise from the same practices and course of conduct
6 that give rise to the claims of the members of the Class and are based on the same legal theories.
7

8 27. **Adequacy:** Plaintiff will fully and adequately assert and protect the interests of
9 the classes and has retained class counsel who are experienced and qualified in prosecuting class
10 actions. Neither Plaintiff nor its attorneys have any interests contrary to or in conflict with the
11 Class.
12

13 28. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or Varying
14 Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
15 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
16 common to all members of the class. The prosecution of separate actions by individual members
17 of the classes would risk of inconsistent or varying interpretations of those policy terms and
18 create inconsistent standards of conduct for Defendant. The policy interpretations sought by
19 Plaintiff could also impair the ability of absent class members to protect their interests.
20

21 29. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
22 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other members
23 of the proposed classes making injunctive relief and declaratory relief appropriate on a classwide
24 basis.
25

26 30. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
superior to all other available methods of the fair and efficient adjudication of this lawsuit. While
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1 the aggregate damages sustained by the classes are likely to be in the millions of dollars, the
 2 individual damages incurred by each class member may be too small to warrant the expense of
 3 individual suits. Individual litigation creates a risk of inconsistent and/or contradictory decisions
 4 and the court system would be unduly burdened by individual litigation of such cases. A class
 5 action would result in a unified adjudication, with the benefits of economies of scale and
 6 supervision by a single court.
 7

8 VI. CAUSES OF ACTION

9 Count One—Declaratory Judgment

10 *(Brought on behalf of the Business Income Coverage Declaratory Relief Class,
 11 Business Income Coverage Declaratory Relief Washington Subclass, Extended Business
 12 Income Declaratory Relief Class, Extended Business Income Declaratory Relief Washington
 13 Subclass, Civil Authority Declaratory Relief Class, Civil Authority Declaratory Relief
 14 Washington Subclass, Extra Expense Declaratory Relief Class, and Extra Expense
 15 Declaratory Relief Washington Subclass)*

16 31. Previous paragraphs alleged are incorporated herein.

17 32. This is a cause of action for declaratory judgment pursuant to the Declaratory
 18 Judgment Act, codified at 28 U.S.C. § 2201.

19 33. Plaintiff brings this cause of action on behalf of the Business Income Coverage
 20 Declaratory Relief Class, Business Income Coverage Declaratory Relief Washington Subclass,
 21 Extended Business Income Declaratory Relief Class, Extended Business Income Declaratory
 22 Relief Washington Subclass, Civil Authority Declaratory Relief Class, Civil Authority
 23 Declaratory Relief Washington Subclass, Extra Expense Declaratory Relief Class, and Extra
 24 Expense Declaratory Relief Washington Subclass.

25 34. Plaintiff seeks a declaratory judgment declaring that Plaintiff's and class members
 26 losses and expenses resulting from the interruption of their business are covered by the Policy.

35. Plaintiff seeks a declaratory judgment declaring that Travelers is responsible for timely and fully paying all such losses.

Count Two—Breach of Contract

(Brought on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, and Extra Expense Breach of Contract Washington Subclass)

36. Previous paragraphs alleged are incorporated herein.

37. Plaintiff brings this cause of action on behalf of the Business Income Coverage Breach of Contract Class, Business Income Coverage Breach of Contract Washington Subclass, Extended Business Income Breach of Contract Class, Extended Business Income Breach of Contract Washington Subclass, Civil Authority Breach of Contract Class, Civil Authority Breach of Contract Washington Subclass, Extra Expense Breach of Contract Class, and Extra Expense Breach of Contract Washington Subclass.

38. The Policy is a contract under which Plaintiff and the class paid premiums to Travelers in exchange for Travelers's promise to pay Plaintiff and the class for all claims covered by the Policy.

39. Plaintiff has paid its insurance premiums.

40. Upon information and belief, Travelers denied coverage for other similarly situated policyholders.

41. Denying coverage for the claim is a breach of the insurance contract.

42. Plaintiff is harmed by the breach of the insurance contract by Travelers.

VII. PRAYER FOR RELIEF

1. A declaratory judgment that the policy or policies cover the plaintiff's losses and expenses resulting from the interruption of the plaintiff's business by COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other authorities.

2. A declaratory judgment that the defendant is responsible for timely and fully paying all such losses.

3. Damages.

4. Pre- and post-judgment interest at the highest allowable rate

5. Reasonable attorney fees and costs.

6. Such further and other relief as the Court shall deem appropriate.

VIII. DEMAND FOR JURY

Plaintiff Hsue demands a jury trial on all claims so triable.

DATED this 24th day of April, 2020.

1 KELLER ROHRBACK L.L.P.
2

3 By: s/ Ian S. Birk
4 By: s/ Lynn L. Sarko
5 By: s/ Gretchen Freeman Cappio
6 By: s/ Irene M. Hecht
7 By: s/ Maureen Falecki
8 By: s/ Amy Williams Derry
9 By: s/ Nathan Nanfelt
10

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12 Lynn L. Sarko, WSBA #16569
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